IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 627 OF 2005

IN

SUMMARY SUIT NO. 1047 OF 2001

Vishwanath Sitaram Kamath .....**Plffs.**
vs.
M/s. Absolute Prints (I) P. Ltd and Ors. .....**Defnds.**

D.P. Kamath for the plaintiffs.
Ahmad Sayyad i/by. Pallavi kadam
for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 27th February, 2006.

P.C. :.

1. The present suit is filed for Rs.4,04,000/-. The claim arises under a contract which has been evidenced by Exhibit-A and B to the plaint which is for supply of machines worth Rs.9 lacs. The defendants have accepted the said offer to purchase the said machine for Rs.9 lacs. There is no dispute as to the delivery of the machines.

However the learned counsel for the defendant raised two contentions.

2. Firstly it has been contended that there was a delay in delivery of the machines. In my opinion the aforesaid contention has no merits because the letter dated 22.4.2000 sent by the plaintiff to the defendant itself records that the machines are ready for delivery on 24.5.2000. However the defendant is requesting the plaintiff not to deliver for some time and also change of delivery address has been given by the defendant. In the light of the said letter which has been admittedly received by the plaintiff and replied to by a letter dated 25.9.20000 and in the reply letter having raised no such contention, I find that the above contention has no merits and thus I reject the same.

3. The next contention raised by the learned counsel for the defendant is that there was an oral agreement and mutual understanding that the machines will be resold by the plaintiff to the

third party on behalf of the defendants save and except the request made by the defendant to the plaintiff in a letter dated 25.9.2000. The said fact is not supposed by any evidence nor any material is produced in support thereof. The defence taken up is ex-facie bogus and is liable to be rejected. The machines having been accepted the defendant is liable to make payment to the plaintiff of Rs.4,64,000/-. Accordingly I pass a decree in favour of the plaintiffs and against the defendants for Rs,.4,64,000/- with further interest at the rate of 12% p.a. s.i.

4. Learned counsel for the plaintiff does not press the suit as against defendant nos.2 an 3 inview of the fact that defendants nos.2 and 3 are mere directors and not personally liable. Accordingly decree is passed against defendant no.1 and not against defendant nos.2 and 3.

. Suit as well as Summons for Judgment disposed off accordingly.

sd/-

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